IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5441 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DASHRATHBHAI LALLUBHAI SHRIMALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5441 of 2000

MR PK JANI for Petitioner No. 1

MR PR ABICHANDANI, AGP, for Respondent No. 1-2,

MR BHARAT T RAO for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/07/2001

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the order dated 30-12-1999 passed by the State Government in the Urban Development and Urban Housing Department dismissing the petitioner's revision application No.38 of 1998 and confirming the order dated 1-5-1998 passed by the Collector, Mahesana under sec. 258 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as `the Act').

2. The petitioner was earlier granted licence by Kheralu Nagar Panchayat to put up a cabin for carrying on his business near primary school on the way to the old police lines. The petitioner was granted such licence in the year 1976. Some time in the year 1996, the petitioner submitted a representation to the Kheralu Municipality for permission to construct a pucca shop on the land admeasuring 9'-6" X 12'-01". The Municipality accepted the representation and passed resolution No.34 dated 24-10-1996 in favour of the petitioner permitting the petitioner to put up pucca construction on the aforesaid land in question. The Collector, Mahesana took this resolution in suo motu revision under sec. 258 of the Act and passed order dated 1-5-1998 (Annexure H) requiring the petitioner to remove the pucca constructed cabin. Aggrieved by the aforesaid order, the petitioner went in revision before the State Government. The revision came to be dismissed by the impugned order dated 30-12-1999 (Annexure L). Hence, this petition.

3. At the hearing of this petition, Mr. P.K. Jani, learned counsel for the petitioner has submitted that when the Municipality had granted the permission to put up the construction, the Collector had no authority to pass any order setting aside that resolution. It is submitted that the Municipality had not granted any lease and therefore the Collector has wrongly applied the provisions of sec. 65 (2) of the Act. In the alternative, it is submitted that when the petitioner has been carrying on his business at the site in question for the last about 25 years, the Collector ought not to have disturbed the position after so many years.

4. Mr. B.T. Rao for Kheralu Municipality, has supported the petitioner and has submitted that earlier the Municipality had passed the resolution dated 18-11-1978 (Annexure A) permitting the petitioner to put up the kachcha cabin on the land in question at an annual rent of Rs.180/-. The petitioner has been carrying on tailoring business and he had submitted an application in 1996 for putting up a pucca construction on the land in question. By resolution No.45 dated 24-5-1996, the Municipality granted permission to put up the construction upto plinth level. Thereafter, again the petitioner submitted an application that pucca construction put up by him on the land admeasuring 12' X 9'-6" may be regularised as he needs such constructed shop to prevent any damage to the goods and machine lying in his small shop. The Municipality also noted the letter received from the Police Department and observed that since even after cabin, there was a road of width of

13', there was no harm in regularising the construction and permitting the petitioner to carry on his business at the site in question.

5. On the other hand, Mr. P.R. Abichandani, learned AGP for respondents No.1 and 2 has opposed the petition and submitted that the Municipality could not have passed the resolutions in question being resolution dated 24-5-1996 and 24-10-1996 because the land in question is a part of the public street. In view of the provisions of sec. 65 (2) of the Act, the Municipality has no power to grant lease on an immovable property for a term exceeding 10 years without previous permission of the State Government. It is further submitted that even the State Government cannot grant such permission if such land forms a street or a part of a street.

6. Having heard the learned counsel for the parties, it appears to the Court that there is considerable substance in the submissions made by Mr. Abichandani, learned AGP, that by not using the term "lease" in its resolution, the Municipality cannot get out of the provisions of sec. 65 (2) of the Act. What has been permitted by the Municipality is not just a permissive user of the land in question like putting up a lari on a street or granting the hawking licence but Municipality has permitted the petitioner to put up the pucca construction on the land in question which is more than even granting lease of land for a term exceeding 10 years.

7. As regards the contention urged by Mr. Rao for the Municipality that the land in question is not a part of a public street and that on the contrary it is the Municipality which has given facility to the Police Department for having access to the police lines, the contention cannot be accepted. A look at the map of the area in question indicates that the land in question is a part of the public street. Hence, the contention urged on behalf of the petitioner that the provisions of sec. 65 (2) of the Act are not applicable cannot be accepted.

8. As regards the contention urged by Mr. Jani for the petitioner that the petitioner has been carrying on his business at the site in question for the last more than 25 years, although the same can invoke sympathy, that cannot take away the power of the authorities to remove the obstruction on a public street. However, that can certainly be a relevant factor while moulding the reliefs.

9. Hence, while dismissing the petition, considering the fact that it was the Municipality itself which had permitted the petitioner to put up the cabin on the land in question in the year 1976, respondent No.3 Municipality is directed to offer the petitioner an alternative site of approximately 13' X 9' for carrying on the business in any other part of Kheralu town by 31st December, 2001. Till the Municipality offers such alternative site to the petitioner, the respondents shall not remove the cabin put up by the petitioner. It will also be open to the petitioner to make representation to the authorities for appropriately safeguarding the interest of the petitioner.

10. Subject to the aforesaid directions, this petition is dismissed. Rule is discharged.

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